

**Comments to the Federal Trade Commission
From the National Consumers League
Regarding FACTA Free File Disclosures Proposed Rule
Matter No. R411005
April 16, 2004**

Introduction

The National Consumers League (NCL), a nonprofit organization founded in 1899 to identify, protect, represent, and advance consumers' social and economic interests, is pleased to provide comments about implementation of the free file disclosure provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACTA). The ability to get free copies of their credit reports once every 12 months will help consumers understand and improve their credit-worthiness and detect problems such as errors and identity theft. NCL believes that the FACTA Free File Disclosures Rule (the Rule) should ensure that all consumers are able to benefit from these provisions as quickly and easily as possible.

Extraordinary request volume

Since the Federal Trade Commission (FTC) has provided no explanation for how the proposed definition of extraordinary request volume was determined, it is difficult to comment on whether this is the appropriate trigger to limit liability for fulfilling consumers' file requests under the FACTA. NCL is concerned that media reports about identity theft, public education programs, and other factors could cause spikes in demand so frequently that the liability limit would be constantly invoked. Furthermore, it is difficult to project how the centralized source for file disclosure requests will work or to compare it to the various systems that the nationwide consumer reporting agencies have used in the past to fulfill file requests. The new system may be so efficient that it can handle a sudden doubling of requests with no difficulty.

NCL suggests that the FTC should wait to determine what, if any, volume should merit limitation of liability until the centralized source has been operational nationwide for at least one year. In the interim, the consumer reporting agencies could make specific requests for limited liability, which the FTC could grant on a case-by-case basis on consideration of the facts presented.

Language requirements for centralized source for requesting file disclosures

The centralized source for consumers to obtain annual file disclosures must be easy to access and use. According to 2000 U.S. Census Bureau data, there were 35.3 million people of Hispanic origin in the United States, comprising nearly 13 percent of the population. Furthermore, a Census 2000 Brief on Language Use and English-Speaking Ability published by the U.S. Census Bureau in October 2003 reported that 28.1 million people spoke Spanish rather than English at home and that, of those, 13.8 million spoke English less than “Very Well.” To ensure that this population can easily access and use the centralized source, the Web site, request forms, and telephone system must be available in Spanish as well as English.

Collection and use of personally identifiable information for requesting file disclosures

NCL is aware that because each consumer reporting agency has developed its own fraud detection system, the information they require in order to verify the identity of consumers requesting files may vary from one to another. However, with a centralized source for requesting file disclosures, consumers will naturally assume that they only have to provide one set of identifying information. Ideally, the requirement for a centralized system will encourage the consumer reporting bureaus to share best practices for fraud prevention and harmonize at a high level of protection. If consumers will potentially be asked by each bureau to provide additional (and different) information, that request must be integrated into the process so that it doesn’t cause consumer frustration or delay fulfillment. For instance, the online form could be designed so that specific questions pop up when the consumer clicks on the individual reporting agencies or on the “all agencies” option.

The FACTA requires the establishment of a centralized source specifically to facilitate consumers’ new rights to obtain free annual file disclosures. NCL strongly believes that it would be inappropriate to allow the information that consumers provide to exercise that right to be used for anything else. The Rule should explicitly prohibit using that information for marketing or other secondary purposes, or sharing it with third parties except to extent necessary to fulfill consumers’ free file disclosure requests.

Use of centralized source to promote other products and services

NCL also adamantly opposes allowing the centralized source to be used to promote other products and services offered by the consumer reporting agencies or others. There is nothing in the FACTA that entitles the consumer reporting bureaus to use the centralized source for profit or to offset the expense of providing the free annual file disclosures by marketing through it.

At the very least, it would be distracting for consumers to see or hear messages that diverge from the reason why they have gone to the centralized source – to obtain their free annual file disclosures. Any additional information on the Web site, in the telephone service, or on mail-in forms should be for educational purposes directly related to how consumers can obtain and understand their file disclosures.

Furthermore, providing other products or services through the centralized source would distract the consumer reporting bureaus from their central obligation – to fulfill the file disclosure requests within the time limit required. NCL cannot help but wonder why consumer reporting bureaus should be entitled to limited liability in times of extraordinary demand for free file disclosures, while at the same time they might be employing some of the resources of the centralized source to process orders for credit monitoring and other products or services.

If marketing of any type is allowed through the centralized source, it should be strictly limited to the credit scores that the FACTA requires the consumer reporting agencies to make available for a “fair and reasonable” fee to be determined by the FTC. The FTC could require that the centralized source be used to prominently disclose the availability of these scores. The potential for confusion and unfair or misleading sales tactics is too great to allow information about other products and services that are not required to be made available by law, and for which the fees are not set by the FTC, to be provided through the centralized source. If information about the federally mandated credit scores were provided, it would also be useful to offer educational information about credit scoring through the centralized site.

Adequate capacity to fulfill consumers’ requests for free annual file disclosures

The FTC correctly notes that consumer reporting agencies must implement reasonable procedures to anticipate and respond to the volume of requests to the centralized source in order to fulfill their obligations under the FACTA to provide annual file disclosures in a timely manner. NCL recognizes that there may be periods of extraordinary demand, however that is to

be defined, during which it might be impossible to fulfill file requests within the required 15 days. While this might cause consumers' requests to be delayed, it should not cause them to lose their place in queue or require them to start the request process over. What guarantee is there that consumers would not have to make their requests repeatedly until they are finally fulfilled?

NCL is concerned that consumers could become discouraged and forgo their rights to free file disclosures, defeating one of the major provisions of the FACTA. Consumer reporting agencies should have additional time to fulfill requests in extraordinary circumstances, but they should not have the option to tell consumers to "go away, come back another day."

Furthermore, the Rule should require the consumer reporting agencies to notify the FTC whenever they invoke limited liability for extraordinary high volume so that questions and complaints in that regard can be handled appropriately.

Managing the transition period

The proposal by the FTC to stagger the transition period geographically over the course of nine months seems unwarranted. The entire transition period for consumer access to the FTC's national "do not call" registry was only two weeks. Arguably, providing free file disclosures through the centralized source may be a bit more complex, and the FTC has some limited information from states that have implemented rights to free credit reports. However, it is unfair to bar consumers in the eastern part of the country from asserting their new rights until September 2005, especially when there is no clear evidence that such a long delay is needed.

The FTC should consider a pilot project to test the new system, perhaps for a period of one or two months in a specific region of the country. That would provide enough information to determine whether there is any need to stagger the availability of free annual disclosures to consumers throughout the rest of the country. The goal must be to make access to the centralized source available to all as soon as possible.

Availability of free annual file disclosures after the transition period

Consumers should not be limited to requesting free annual file disclosures during the months of their birthdays or by their geographical locations. Under these constraints, if consumers failed to act within the designated time slots, they would have to wait until the same time the following year, effectively denying them their free file disclosures for more than 12

months. It should be up to individual consumers to decide whether and when they want to exercise their rights to obtain the free file disclosures.

Truncated social security numbers on file disclosures

The social security number is the key that unlocks a person's identity – if it falls into the wrong hands, it can cause serious, long-term problems for the identity theft victim. The potential for harm is so great that NCL believes the default should be truncation. Whatever format consumers use to ask for their file disclosures, there should be an explanation that because of security concerns, it is assumed that they are requesting that only the last four digits of the social security number be shown on the files. Consumers could then opt-out of the security default if they want the whole number to be included.

Standardized form for requesting annual file disclosures

As NCL reads it, the FACTA provides consumers with the right to request a free file disclosure from *each* of the consumer reporting agencies once in a 12 month period. It is conceivable that a consumer may request a free report from one consumer reporting agency and decide, two months later, to request a free report from another. On the form and in the other methods that consumers can use to contact the centralized source, it should be made clear that they can make separate requests for their file disclosures from each agency and that the 12 month period runs from each of those requests as to the agency or agencies involved.

Consumers should also be informed when they request their file disclosures that the information they provide will not be used for marketing or other purposes. Otherwise, they may be reluctant to provide things such as their email addresses or phone numbers, yet those may be the fastest way for the agencies to contact them if more information is needed to fulfill their requests.

Conclusion

The FACTA provides important new rights and benefits to consumers. To ensure that consumers can take full advantage of those rights and benefits, the centralized source for annual free file disclosures must be available to all as quickly as possible and operate in a manner that serves the intentions of the FACTA: to prevent identity theft, improve the accuracy of consumer

records, provide consumers with better access to and use of their credit information, and help them resolve disputes. In setting the parameters for how the system for providing the free annual file disclosures will work, the FTC should give the interests of consumers the highest priority. NCL appreciates the opportunity to share its views on this matter and looks forward to working with the FTC and others to educate consumers about their new rights.

Respectfully submitted by:

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